

MV 98-2

Tax Type: MOTOR VEHICLE USE TAX

Issue: Private Vehicle Use Tax - Value Exceeds \$15,000

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

TAXPAYER

**No.
Motor Vehicle Use Tax
NTL #**

**Mimi Brin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Tracy Birmingham of Sidley & Austin, for TAXPAYER; Alan Osheff, Special Assistant Attorney General, for the Illinois Department of Revenue

Synopsis:

This matter comes on for hearing as a remand from the Illinois Board of Appeals. Transcript ("Tr.") p. 8 It concerns Notice of Tax Liability ("NTL") No. XXXXX issued by the Illinois Department of Revenue ("Department") for Vehicle Use Tax on a 1993 Porsche Carrera automobile ("Porsche") for which TAXPAYER ("TAXPAYER" or "Taxpayer") sought title in March, 1996. Taxpayer was represented at hearing by counsel. No witnesses appeared at hearing to offer oral testimony. Following the submission of all evidence and a review of the record, it is recommended that this matter

be resolved in favor of the Department. In support thereof, the following findings of fact and conclusions of law are made:

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Notice of Tax Liability for Vehicle Use Tax No. XXXXX, which showed a tax owing of \$1,285.00 with interest calculated through June 28, 1996. Department Ex. No. 1
2. Taxpayer filed a Vehicle Use Tax Return ("Return") with the Department on March 19, 1996, indicating that he had received the Porsche as a "gift" and, further indicating that the tax due thereon was \$215.00. Taxpayer Ex. No. 1

Conclusions of Law:

The Vehicle Use Tax (625 ILCS 5/3-1001 *et seq.*) ("VUT") imposes a tax "on the privilege of using, in this State, any motor vehicle as defined in Section 1-146 of this Code acquired by gift, transfer, or purchase... ." *Id.* at 5/3-1001 The pertinent statute then sets forth the appropriate amount of tax due. According to the statute, for the pertinent time period, and for a vehicle that was three years old, as in this case, the tax liability was \$215.00 if the selling price of the motor vehicle was less than \$15,000. *Id.*

The VUT further defines the term "selling price", specifically providing that "[I]n the case of gifts or transfers without reasonable consideration, 'selling price' shall be deemed to be the fair market value as determined by the Department." *Id.*

The facts of this matter are that the Porsche was three years old when TAXPAYER submitted the return, and, that TAXPAYER received it as a gift. Therefore, the only question remaining is its value. As the statute indicates, if its value is less than \$15,000, TAXPAYER's determination of tax is correct.

The VUT fully incorporates the Use Tax Act (35 ILCS 105/101 *et seq.*) (35 ILCS 5/3-1003) which, in turn, incorporates provisions of the Retailers' Occupation Tax Act (35 ILCS 120/101 *et seq.*) 35 ILCS 105/12 Thus, the NTL issued by the Department is deemed to be *prima facie* evidence of the amount of the tax shown to be due thereon. 35 ILCS 120/4 In order to overcome the presumption of validity attached to the NTL, the taxpayer must produce "competent evidence" identified with its books and records, showing that the Department's determination is incorrect. Copilevitz v. Department of Revenue, 41 Ill.2d 154 (1968) Oral testimony is not sufficient to overcome the *prima facie* correctness of the Department's determination. A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App.3d 826 (1st Dist. 1988)

In fact, taxpayer presented no evidence for the record as to the value of the Porsche when he filed the return with the Department. As such, TAXPAYER failed to overcome the *prima facie* correctness of the NTL which set the Porsche's value at more than the under \$15,000 that taxpayer averred.

WHEREFORE, for the reasons stated above, it is my recommendation that the Notice of Tax Liability No. XXXXX be finalized, as issued.

3/5/98

Mimi Brin
Administrative Law Judge